

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Petition of the California Public Utilities	)	
Commission and the People of the State of	)	
California for Authority to Implement	)	
Specialized Overlay Area Codes	)	

**JOINT COMMENTS OF**  
**CALIFORNIA ISP ASSOCIATION, ICG TELECOM GROUP, INC.**  
**LEVEL 3 COMMUNICATIONS, LLC, RCN TELECOM SERVICES, INC.**  
**AND VONAGE HOLDINGS CORP.**

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**Dated: December 2, 2003**

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## Summary

On October 6, 2003, the California Public Utilities Commission (“CPUC”) filed a Petition for Authority to Implement Specialized Overlay (“SO”) Area Codes (“Petition”). In the Petition, the CPUC has requested from the Federal Communications Commission (“Commission”) authority to implement two permanent, technology-specific area code overlays in California to include non-geographic and geographic-based telephone numbers associated with particular services such as voice over Internet protocol (“VoIP”), paging services, Enhanced Service Providers which include Internet service provider (“ISP”) dialup numbers, and fax and modem lines for businesses with over 50 access lines. The Petition, which seeks authority to implement one SO each in Northern and Southern California, also requests authority to take-back existing numbers for re-use in existing area codes and a waiver of the Commission’s 10-digit dialing requirement.

The majority of commenters in this proceeding have opposed the Petition for numerous reasons. One reason is that the Petition does not meet the FCC’s criteria for implementing specialized overlays. The FCC set out eight criteria in its *Third Report and Order* on Number Resource Optimization that governs requests for authority to implement SOs, but the CPUC Petition fails to adequately address or meet such criteria. For example: the proposed SOs are not limited to non-pooling and non-geographic based services as required by the FCC’s order; the petition does not address how the proposed SOs would relieve demand for numbering resources; the CPUC proposes to create permanent, as opposed to the transitional SOs favored by the FCC; and the petition proposes to take-back assigned numbering resources without a strong cost-benefit showing.

In addition, the Petition proposes a plan that imposes significant burdens on service providers. Service providers would be required to revise their systems and procedures to track use of numbering resources. Such a task is complicated by the fact that it is difficult to verify the accuracy of such tracking for several reasons. Customers would also bear the burden of making sense of non-uniform dialing patterns and would likely be confused over whether a call was a local or toll call.

Finally, the CPUC has not demonstrated that the benefits generated by its proposal would be justified by the costs it imposes. The Petition makes no such showing because the CPUC's proposal would fail such a cost-benefit examination. The proposal's unconventional nature makes it impossible to quantify the anticipated benefits, and there is the very real possibility that the proposal would actually hinder numbering resource conservation by stranding significant numbering resources and spreading existing demand for numbers resources among more number plan areas.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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The California ISP Association, ICG Telecom Group, Inc., Level 3 Communications, LLC, RCN Telecom Services, Inc., and Vonage Holdings Corp. (collectively “Joint Commenters”) hereby submit these reply comments pursuant to the Federal Communication Commission’s (“Commission”) October 16, 2003, Public Notice<sup>1</sup> concerning the California Public Utilities Commission (“CPUC”) Petition to implement specialized overlay area codes.<sup>2</sup> The Joint Commenters oppose the CPUC Petition for the reasons detailed herein.

**I. INTRODUCTION**

The overwhelming majority of parties filing comments in this proceeding oppose the CPUC Petition for a myriad of reasons. The most significant reason is that the CPUC Petition repeatedly fails to meet the Commission’s criteria for granting authority to implement specialized overlay area codes. The petition proposes new overlay codes that are permanent,

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<sup>1</sup> See *Wireline Competition Bureau Seeks Comment on the California Pub. Utils. Comms’n and the People of the State of California for Authority to Implement Specialized Overlay Area Codes*, Public Notice, CC Docket No. 99-200 (rel. Oct. 19, 2003).

<sup>2</sup> See *Petition of the California Pub. Utils. Comms’n and of the People of the State of California for Authority to Implement Specialized Overlay Area Codes*, CC Docket No. 99-200 (filed Oct. 6, 2003) (“CPUC Petition”).

affect geographically-sensitive numbers, and requests authority to take-back assigned numbering resources – attributes which are contrary to the Commission’s recommendations and favor. In addition, the CPUC’s proposal would impose significant costs on service providers and consumers without making a convincing showing that the benefits accrued from the plan would outweigh such costs. For these reasons, the Joint Commenters oppose the CPUC petition.

## **II. THE CPUC PETITION DOES NOT MEET FCC CRITERIA FOR IMPLEMENTING SPECIALIZED OVERLAYS**

There is near unanimous agreement that the CPUC’s proposed plan to implement specialized overlays (“SOs”) either fails to meet or to address the relevant criteria governing such requests as established by the Commission in the *Third Report and Order*.<sup>3</sup> In the *Third Report and Order*, the Commission lifted its blanket prohibition against SOs. However, the Commission also set out specific criteria that state commissions must meet in order to obtain authority to establish SOs.<sup>4</sup>

The Commission determined that proposals for SO should be limited to non-pooling and non-geographic based providers.<sup>5</sup> Non-geographic-based providers are those companies that provide non-geographic-based services defined as services that “include unified messaging services and automobile-based services such as OnStar. Consumers of such services are likely unaware of or have no preference for, where their number comes from.”<sup>6</sup> While the CPUC Petition asserts that the proposed SOs will include non-geographic-based telephone numbers, the

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<sup>3</sup> See generally Numbering Resource Optimization, *Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200*, 17 FCC Rcd 252 (2001) (“*Third Report and Order*”).

<sup>4</sup> See *Third Report and Order*, 17 FCC at Rcd at 282-294.

<sup>5</sup> See *Third Report and Order*, at 17 FCC Rcd at 288.

<sup>6</sup> *Third Report and Order*, at 17 FCC Rcd at 288, n.201.

bulk of commenters highlight that in actuality, it includes both geographic-based telephone numbers and providers.<sup>7</sup> The Petition proposes to include numbers in the SOs that are utilized to provide Internet protocol (“IP”) telephony services, dial-up numbers for Internet service providers (“ISPs”), as well as certain facsimile and modem telephone numbers.<sup>8</sup>

While competitive local exchange carriers (“CLECs”) do not track the services associated with particular telephone numbers, the telecommunications services they provide to their customers are used for these purposes. CLECs are “pooling” participants and their customers are very much aware of and have preferences as to where their numbers come from.<sup>9</sup> Similarly, VoIP providers rely on access to the same numbering resources as used by existing service providers in order to effectively compete in the marketplace.<sup>10</sup> Many VoIP providers rely upon CLECs for telecommunications services utilized to provide their product. Accordingly, the CPUC’s proposed plan would extend to geographic-based and pooling providers. Inclusion of such providers in the SOs is disfavored by the Commission as it negatively impacts competition by disadvantaging users of the services subject to the SOs.<sup>11</sup>

Separately, the Joint Commenters note that many parties correctly raised the threshold issue that the CPUC Petition does not provide a clear methodology for determining what types of services will be included in the proposed SOs and why. Specifically, the CPUC intends to

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<sup>7</sup> See, e.g., *AT&T* at 2; *California Cable and Telecommunications Ass’n*, at 9-10 (“CCTA”); *California Small ILECs* at 12 (“Small ILECs”); *Frontier Companies* at 15 (“Frontier”); *j2 Global Communications, Inc.* at 3-4; *MCI* at 3; *OnStar Corporation* at 3-4; *SBC Communications, Inc.* at 4 (“SBC”); *Sprint* at 2; *SureWest Telephone* at 8 (“SureWest”); *Vonage Holdings Corp.* at 5 (“Vonage”).

<sup>8</sup> See *CPUC Petition*, at 2-3.

<sup>9</sup> See *SBC*, at 4-5.

<sup>10</sup> See *Vonage*, at 5-9.

<sup>11</sup> See *Third Report and Order*, 17 FCC Rcd at 288.

include Internet telephony and VoIP services in the overlay,<sup>12</sup> but does not define what is meant by these terms.<sup>13</sup> Further, the CPUC provides no reasoning as to why the multiple services it identifies should be subject to the proposed overlays.<sup>14</sup> Left entirely unaddressed by the CPUC is the issue of whether permanently segregating the proposed services to the SOs would relieve demand for numbering resources in the existing area codes.<sup>15</sup>

The CPUC Petition plans to create two permanent, as opposed to transitional, SOs whereby the SOs will include a wide range of services. In the *Third Report and Order*, the Commission determined that if state commissions proposed to implement a permanent SO, it should be limited to non-geographic-based telephone numbers.<sup>16</sup> The Commission reasoned that permanent SOs that included only non-geographic-based telephone numbers could serve the useful purpose of preserving geographic-based telephone numbers.<sup>17</sup> Rather than conform its proposed SOs to the dictates of the Commission, the CPUC has instead provided for a permanent SO, that includes geographic-based telephone numbers and is not limited to a particular

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<sup>12</sup> See *CPUC Petition*, at 3.

<sup>13</sup> *AT&T* at 16-17; *CCTA* at 20-21

<sup>14</sup> See, e.g., *Small ILECs* at 7; *CCTA* at 15; *Frontier* at 7; *j2 Global* at 7.

<sup>15</sup> See, e.g., *AT&T* at 11 (highlighting the fact that the CPUC cannot forecast potential benefits of the SOs because numbers are not tracked in a manner that would allow such calculations); *Allied Paging* at 5 (emphasizing that CPUC does not know current or future demand for services that would be included in the proposed SOs); *CTIA* at 4 (stating that the lack of specificity in the Petition makes it impossible to estimate any benefits of the proposed plan); *CCTA* at 21-22 (noting that it's unclear whether VoIP services will increase demand for numbering resources in any appreciable way); *j2 Global* at 13-14 (stressing that the CPUC's proposal lacks demand forecasts to justify the SOs); *SBC* at 12 (pointing out that the CPUC Petition lacks conservation projections); *Verizon* at 2 (observing that the CPUC Petition does not indicate how much demand will be diverted from the underlying codes); *Verizon Wireless* at 6-7 (asserting that there is no evidence that dispersing numbers in manner proposed by CPUC will solve any numbering problems).

<sup>16</sup> See *Third Report and Order*, 17 FCC Rcd at 289.

<sup>17</sup> See *Third Report and Order*, 17 FCC Rcd at 285-86.



technology or service. As such, the CPUC Petition does not preserve geographic-based telephone numbers but severs such numbers from their locality.

It is also unclear as to why the CPUC has proposed two unconventional overlays that would include so many different rate centers. A geographically-targeted all-services overlay would be preferable to the one proposed by the CPUC for a variety of reasons. Such an overlay would not have to be subject to particular services, it can be narrowly focused on the areas most in need of area code relief, would not require take-backs, and would be less costly to administer.<sup>18</sup> By proposing an unusually large, permanent SO that includes geographic-based telephone numbers applicable to multiple services, the CPUC Petition fails the criteria set out in the *Third Report and Order*.<sup>19</sup>

Both the Michigan Public Service Commission (“MPSC”) and the New York Department of Public Service (“NYDPS”) filed comments supporting the CPUC’s 7-digit dialing plan within the proposed SOs.<sup>20</sup> However, the MPSC and the NYDPS note that the Commission normally requires 10-digit dialing both within and between existing area codes and the overlay when a state commission adopts this form of area code relief in order to preserve competition among the affected carriers.<sup>21</sup> These state commissions’ support for the CPUC’s plan is premised on the fact that the CPUC’s proposed SOs would be limited to non-geographic services.<sup>22</sup> To the contrary, as discussed above, the CPUC’s Petition includes geographic-based telephone numbers

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<sup>18</sup> See, e.g., *AT&T*, at 15-16; *CCTA* at 16; *MCI* at 4-5; *Verizon Wireless* at 3-4, 8.

<sup>19</sup> See, e.g., *Paging Assoc.* at 8; *CCTA* at 13; *j2 Global* at 5; *MCI* at 2-3; *SBC* at 2-3, 7-8; *Verizon Wireless* at 3-4; *Vonage* at 10.

<sup>20</sup> See *Michigan Public Service Commission* at 3; *New York Department of Public Service* at 2.

<sup>21</sup> See *Michigan Public Service Commission* at 3; *New York Department of Public Service* at 2.

<sup>22</sup> See *Michigan Public Service Commission* at 3; *New York Department of Public Service* at 2-3.

in the SOs. As such, it is likely that both the MPSC and the NYDPS would not support the CPUC's plan due to competitive considerations.

Perhaps the most egregious example of the CPUC's failure to conform to the applicable Commission standards is its proposal to engage in take-backs of assigned numbering resources. In the *Third Report and Order*, the Commission found that take-backs were extremely costly and cause significant inconvenience to customers that are required to relinquish their existing telephone numbers.<sup>23</sup> Based on these concerns, the Commission stated that it would likely oppose "technology-specific overlays that would include take-backs of numbers that are geographically sensitive."<sup>24</sup> Further, the Commission found that state commissions would have to make a "strong showing" that the benefits associated with take-back outweigh the costs.<sup>25</sup> The Commission established specific factors that it would use to evaluate the costs and benefits of take-back proposals.<sup>26</sup>

The MPSC maintains that take-backs of "telephone numbers from customers of non-geographic services is a basic concept of area code relief" and provides an example relating to geographic splits.<sup>27</sup> The MPSC concludes that take-backs of telephone numbers of non-geographic-based services should be permissible.<sup>28</sup> However, the CPUC Petition is not limited

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<sup>23</sup> See *Third Report and Order*, at 17 FCC Rcd at 291.

<sup>24</sup> See *Third Report and Order*, at 17 FCC Rcd at 292.

<sup>25</sup> See *Third Report and Order*, 17 FCC Rcd at 292.

<sup>26</sup> See *Third Report and Order*, 17 FCC Rcd at 292. The Commission stated that state commission proposal for take-back should include the following: (i) consumers, particularly subscribers that would be required to relinquish their telephone numbers, support such a measure; (ii) that the state will provide incentives for providers and their current customers to relinquish their numbers in the underlying area code; and (iii) a phased-in approach, which would ease the burden on customers and service providers. See *id.*

<sup>27</sup> See *Michigan Public Service Commission*, at 3.

<sup>28</sup> See *Michigan Public Service Commission*, at 3.

to non-geographic based telephone numbers. Additionally, the comparison to geographic-splits is inapposite because geographic splits are implemented as an all-services overlay. All carriers assigning telephone numbers to customers affected by the split are required to use numbering resources from the same area code and it is not dependent upon the type of service offered. Accordingly, there is no competitive advantage associated with geographic splits.

Most parties filing comments opposing the CPUC Petition agree that the take-back portion of the CPUC proposal utterly fails to make the requisite showing that would allow the CPUC to engage in take-backs.<sup>29</sup> First, the CPUC's proposal is neither limited to certain services,<sup>30</sup> nor does it exclude geographically sensitive telephone numbers.<sup>31</sup> The CPUC does not even attempt to quantify the costs or the benefits associated with its take-back proposal but does allude to the fact that the industry has indicated that the costs associated with identifying which telephone numbers are used for a particular service and reprogramming and changing each of their customers' telephone numbers would cause carriers to incur substantial costs.<sup>32</sup> End-users of telecommunications services would also incur substantial costs. For example, if the CPUC were to take-back numbers presently assigned to ISPs, each end-user's modem will require reprogramming. ISPs will have to create and provide software updates to every user. Such costs are not insignificant. The CPUC Petition simply fails to address the factors that the Commission identifies it will use to evaluate the costs and benefits of a particular take-back

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<sup>29</sup> See *AT&T* at 19-20; *Allied Paging* at 8-9; *CCTA* at 13-15; *Small ILECs* at 6; *CTIA* at 5; *Frontier Companies* at 6; *NexTel* at 9; *SBC* at 7-9; *Verizon Wireless* at 4-5; *Vonage* at 11-13.

<sup>30</sup> The CPUC Petition would subject telephone numbers utilized to provide VoIP, dial-up ISP, unified messaging, certain fax and modem lines, as well as other services to take-backs. There is no common technology that underlies these services.

<sup>31</sup> As previously discussed herein, the CPUC's Petition would subject CLECs to the overlay. CLECs are geographic-based providers.

<sup>32</sup> See *CPUC Petition*, at 6.

proposal.<sup>33</sup> In short, the CPUC Petition has not attempted to meet the burden established by the Commission when SOs include take-backs as part of the plan.

### **III. THE CPUC’S PLAN IS OVERLY BURDENSOME AND IMPRACTICAL**

Aside from the fact that the CPUC Petition fails to meet the Commission’s criteria for implementing specialized overlays, the administrative burdens associated with the plan, coupled with its impracticality, make it infeasible. At the outset, most carriers do not currently track telephone number usage in the manner that would be required in order to implement the CPUC’s proposal.<sup>34</sup> When a carrier assigns a telephone number to an end user, the end user’s use of that telephone number for a particular service is not known to the carrier. Carriers would have to develop systems and procedures to track such use, survey existing end users and then track future use. Carriers would have no means to verify whether the reported use was accurate or if the use had changed since the initial number resource assignment. Some end users may use the same line for multiple purposes or may not know how to classify the service due to the convergence of technologies and service. The inclusion of VoIP services in the SOs would further complicate matters as the Commission has not proposed a definition of what constitutes a VoIP service.<sup>35</sup> Setting aside the substantial costs associated with implementing this portion of the CPUC’s plan, it is unrealistic to expect that the data would be accurate even when initially collected.<sup>36</sup>

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<sup>33</sup> See *AT&T* at 19-20;

<sup>34</sup> See, e.g., *AT&T*, at 13-14; *Small ILECs* at 5; *Frontier* at 5; *SBC* at 4-5; *SureWest* at 5; *Verizon* at 5.

<sup>35</sup> *AT&T* at 16-17; *CCTA* at 20-21.

<sup>36</sup> See *Frontier Companies* at 7; *Verizon* at 4.

The CPUC's proposal would also cause massive customer confusion due to its proposed dialing pattern.<sup>37</sup> Established dialing patterns would change in a non-conventional manner as the CPUC proposes seven-digit dialing for customers within the overlay and ten-digit dialing when calling between the overlay and existing area codes. Normally, when an overlay area code is introduced, ten-digit dialing is required for all calls within and between the existing area codes and the overlay code. The CPUC's plan will cause greater customer confusion due to the fact that it would introduce a dialing pattern that is unusual when area code relief is implemented.

Customers would also be confused as to whether a call was local or toll.<sup>38</sup> The CPUC proposes to assign one SO for the whole of Northern California and another for the entirety of Southern California. As detailed above, VoIP services, dial-up ISPs and some facsimiles would be relegated to the SOs. Left unaddressed by the CPUC Petition is how local versus long distance calls will be determined by those parties calling others within the SO. Further, ten-digit dialing will be required when calling from the SO to existing area codes and *vice versa*. Again, the CPUC provides no details as to how customers will know when they are making a toll or local call.

The use of SO numbers for ISPs would also cause customer confusion. Unlike a traditional phone call, dial-up users of Internet access services do not physically enter the telephone number each time they log on to the Internet. The modem and the computer software typically perform this functionality for such users. The ISP has no means to insure that their

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<sup>37</sup> See *AT&T* at 9-10; *NexTel* at 8; *SBC* at 10; *SureWest* at 10-11; *Verizon* at 2, 6.

<sup>38</sup> See *Allied National Paging Assoc. et al.*, at 11; *Small ILECs* at 8; *Frontier* at 10; *NexTel* at 8; *SureWest* at 9; *Verizon* at 2.

customer properly programs their modem with a local telephone number.<sup>39</sup> Since the proposed SOs will cover much more geographic area than any traditional area code currently does, ISP customers will not have the ability to easily determine which ISP-provided access telephone number is a local telephone number. A dial-up user of Internet access services could end up incurring months of access charges due to confusion as to what constitutes a local call under the CPUC's proposed SO scheme. The situation would be exacerbated if numbers presently used by ISP dial-up customers were subject to take-back and ISP customers would have to reprogram their modem software.

#### **IV. THE CPUC HAS FAILED TO JUSTIFY THE COSTS AND BENEFITS OF PROPOSED SPECIALIZED OVERLAYS**

The Commission has made clear that an essential component of a state commission SO plan is justification based on the costs and benefits associated with implementation “states seeking to implement a SO must also demonstrate that the benefits will outweigh the costs of implementing the SO.”<sup>40</sup> The CPUC Petition is devoid of such analysis most likely because the plan would fail such an examination. As many commenters emphasized, since numbers are not currently tracked in the manner that the CPUC's Petition would require, there is no way to forecast whether demand will be eased in any of the impacted rate centers.<sup>41</sup> In light of the fact that the demand for numbering resources associated with the services that will comprise the overlay is unknown, it is unclear as to how the CPUC can make the naked assertion that its

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<sup>39</sup> Without software that automatically configures dialing, small- and medium-sized ISPs must rely on the customer to manually configure their computer modem.

<sup>40</sup> *Third Report and Order*, 17 FCC Rcd at 288.

<sup>41</sup> See, e.g., *AT&T* at 11; *Allied Paging* at 5 (emphasizing that CPUC does not know current or future demand for services that would be included in the proposed SOs); *j2 Global* at 13-14; *SBC* at 12; *Verizon* at 2.

proposed plan will extend the life of many area codes.<sup>42</sup> Further, a number of parties note that the CPUC proposal will do nothing to provide relief in the 310 and 909 area codes which will reach exhaust in a matter of months.<sup>43</sup>

It is also possible that the CPUC's proposal will end up stranding and utilizing more numbering resources if it is implemented. By proposing to take-back telephone numbers used by certain businesses for facsimile and modem services, numbers will be freed up within a sequentially assigned block or blocks of telephone numbers. Blocks of numbers are available for pooling only if 90 percent of the numbers are unassigned. Accordingly, it is unlikely that take-backs would result in freeing up enough resources within a block to allow contribution back to the pool and reassignment to other companies. Carriers that free up numbers in this manner will also have to obtain a minimum of a thousands-block allocation in the relevant SO in order to continue to provide service to the affected customers. By splitting demand between two different area codes, it is likely that utilization levels will fall insignificantly in existing area codes to allow for reassignment of the freed numbering resources and, in the new SOs, many thousands-blocks will be underutilized.<sup>44</sup> While the benefits associated with the CPUC proposal are ambiguous at best, the costs related to implementing the CPUC's proposed plan are significant. Carriers would be required to track telephone numbers in a manner that is not currently done. This would require surveying existing companies and developing systems to track the related data. Carriers would incur costs associated with customer education. These costs would probably be greater than other customer education plans due to the unconventional

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<sup>42</sup> See *CPUC Petition* at 4.

<sup>43</sup> See, e.g., *AT&T* at 7-8; *Allied Paging* at 2; *CTIA* at 3; *NexTel* at 4.

<sup>44</sup> See *SBC*, at 12-13.

characteristics of the CPUC's proposed plan. Further, end-users will incur costs spending time being educated and then reconfiguring their phone numbers and ISP services. Take-backs would also involve many costly activities. Carriers would have to reprogram equipment and businesses would have to reprint stationary and business cards as well as inform their customers and the public of the changes.

Aside from these direct costs, there are many indirect costs that must also be considered. VoIP service providers would lose business as a result of being segregated to the SOs. Many customers would be disinclined to adopt the technology as they would be unable to port their existing telephone numbers if they chose to utilize a VoIP service provider. The proposal would negatively impact number portability throughout the entire industry. If a customer originally chose service from a VoIP provider and was assigned a telephone number from a SO, that customer would not have the ability to later port the assigned number to a CLEC or wireless provider. A telecommunications carrier's compliance with the proposed CPUC plan would be based on the carrier's ability to track and police the content of consumers use of a carrier's provided telecommunications service. Appropriate SO number assignment would require consumers to disclose their intended use and content of their telecommunications service, which is an egregious violation of their privacy and should also be factored in to the cost calculus. In short, while the benefits of the CPUC proposal are difficult to define, the costs are clearly significant.



## **V. CONCLUSION**

For the foregoing reasons, the Joint Commenters urge the Commission to deny the CPUC Petition. The CPUC's proposal repeatedly fails to meet the Commission's criteria for authority to establish specialized overlays, imposes significant costs on service providers and consumers, and provides no analysis to demonstrate that the costs of implementing such a plan are outweighed by any benefits.

Respectfully submitted,

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